IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 171 of 1994

in

SPECIAL CIVIL APPLICATION No 4384 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NALTIONAL INSTITUTE OF DESIGN
Versus
KANTIBHAI M SOLANKI

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Appearance:
1. LETTERS PATENT APPEAL No. 171 of 1994
MR KUNAN NANAVATI for MR KS NANAVATI for Appellant
MR SHALIN MEHTA for MR GIRISH PATEL for Respondent

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 19/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The appellant has challenged the judgment and order of the learned Single Judge made on 25th March, 1994, rejecting the petition which was filed by the appellant against the award dated 28th January, 1994, passed by the Labour Court, Ahmedabad in Reference (LCA) No. 648/86 by which the respondent was ordered to be reinstated in his original job with full wages and other benefits to which he is entitled on the footing that he had been continued in service.

#. The respondent was undisputedly working as an employee of the appellant till 6th March, 1982 even according to the appellant. According to the respondent-employee, after he was appointed by the appellant on 1st January, 1977, he had worked with the appellant upto 30th June, 1985 continuously as a daily wager. Earlier in Reference No. 871/81, the employee had succeeded, according to him, but thereafter he was discharged in January, 1985 when he requested for being made permanent. The witness of the respondent-employee, one Bhikhabhai Dhanjibhai Kalale, in his statement exh. 19, before the Labour Court had stated that the respondent-employee was working along with him as a Peon under the same office. Even the appellant's witness Bhagwatlal Punjalal Shah, who was Head Clerk of the appellant and who was examined before the Labour Court, had stated that he had engaged the respondent in service of the appellant as a Casual Labourer. He admitted that no Departmental Inquiry was held against the respondent on the ground that he had remained absent from work. He has also admitted that the employees who were working with the Institute were at times transferred to the contractor without issuing any formal transfer orders. He has stated that if an employee was absent, the Institute would give a notice and if after giving such notice, he did not present himself, then, an advertisement would be issued in the newspaper and thereafter only, he would be discharged from service. According to him, the respondent did not come on duty after 1982 and he has not been discharged. He has stated that as per the information, the employee used to work in Tirumala Security and Allied Services, who was a Contractor also with the appellant.

#. The Labour Court came to a finding on the basis of the material which was placed on record that the

respondent was discharged from service while his case was pending before the Industrial Tribunal. It was held that no show cause notice was issued to him for having remained absent and the provisions of Section 25F of the Industrial Disputes Act were not followed. It was further held that there was also violation of the provisions of Sections 25G and 25N of the Act. It was then held that the owner of Tirumala Security and Allied Services, i.e. the Contractor was not examined to prove whether the respondent had started working with that Contractor, as asserted by the appellant. It was held that no evidence was adduced in support of the assertion that the respondent had started working with that Contractor after March, 1982. On the basis of the testimony of the concerned employee and other material on record, the Labour Court found that the respondent was discharged on 30th January, 1985 and that the discrepancy in the date, namely, mention of 1.1.'85 in the application was of no consequence. The Labour Court, therefore, held that the termination of the employment of the respondent was illegal. The Labour Court also observed that since there was no material brought on record to show that the Contractor Tirumala Security & Allied Services was a registered Contractor and had obtained the license, the employee should be treated as an employee of the Institution. These observations were of course, independent of the finding reached by the Labour Court on the merits of the case to hold that the services of the employee were wrongly terminated on 30th January, 1985 in contravention of the provisions of the Industrial Disputes Act.

#. Before the learned Single Judge, it was contended that the respondent-workman had abandoned the service from 1982 and was employed with the said Contractor Tirumala Security & Allied Services. It was noted that this fact was disputed by the workman. The learned Single Judge upheld the finding of the Labour Court that the workman had served with the appellant upto 1985 and was thereafter terminated orally without following the due process of law.

#. It appears that the impugned award of the Labour Court was initially stayed, but thereafter, a Division bench of this Court vacated the interim order and the matter was carried to the Supreme Court against that order. Ultimately, by an order dated 23rd March, 1985, made in Civil Appeal No. 3960/95 by the Supreme Court, awarded sum was directed to be deposited in the Labour Court with a direction to the Labour Court to invest the amount in a short term deposit in a nationalized Bank.

So far as the current salary, which was otherwise payable to the respondent, it was ordered that it would be open to the appellant to pay the sum to the respondent without taking any service from the respondent on or before 7th of each succeeding month from which it became due. The Hon'ble Supreme Court also expected the High Court to dispose of the Letters Patent Appeal within the period of four months from the date of that order. A copy of that order is shown to us by the learned counsel for the appellant while the judgment is being dictated. From the record, we do not find the Letters Patent Appeal having been listed earlier than 20th September, 2001, which is endorsed as a date after the matter was admitted on 21.4.'94. When the Hon'ble Supreme Court ordered the matter to be disposed of within the specified time, the Registry should have immediately placed it on the board for hearing and this aspect should be brought to the notice of the Registrar with a view to ascertain as to how is it that the Letters Patent Appeal was not notified within four months from the date of the order dated 23rd March, 1995. Even when the Supreme Court in graceful language requested the High Court to decide the matter by the time indicated in the order of the Supreme Court, it should be clearly understood that such a request should be treated as a direction by the Registry and the matter ought to be placed on the board in time for hearing as per the directions of the Supreme Court.

#. The record clearly reveals that the respondent-employee was working as a daily wager with the appellant since 1977 and he continued to work in that capacity even according to the appellant till March, 1982. Though the appellant has produced copies of the wage register for certain months till March, 1982, it has not produced any such register for the period subsequent to that, in order to show that the name of the respondent did not appear as the employee of the appellant after March, 1982. They have tried to rely upon the copies of the wage register of the Contractor, in order to show that the employee had started working with the Contractor. But it is clear that the copies which are produced are for the months from July, 1984 to November, 1984. It has come on record that this Contractor was also the Contractor of the appellant and as per the statement on oath of the Head Clerk of the appellant, the workers of the appellant used to be sent to the Contractor for work without any formal transfer orders. The appellant has not adduced any reliable evidence to show that from March, 1982 onwards, the respondent had become an employee of the Contractor. No oral or documentary evidence is adduced to show that the wages of

the respondent were paid by the Contractor after March, 1982. Possibility of the respondent being asked by the appellant to work with its Contractor, cannot be ruled out.

#. The case of the appellant is that the respondent had abandoned the work after March, 1982 and, therefore, there was no need to comply with the provisions of Section 25F of the Industrial Disputes Act. Since the respondent was admittedly an employee of the appellant till March, 1982, it would be for the appellant to prove its assertion that after March, 1982, he had abandoned the work. As per the admission made by the appellant's witnesses, in cases of absence, notices are issued to the employees to remain present and if they do not respond, public advertisement is issued and if that too is not responded, then the employee is discharged. Admittedly, no such course was followed in respect of the respondent. Even if an employee had remained absent, there was no reason for the appellant to infer that he had abandoned the service, which made it necessary to issue necessary notice and public advertisement. There was no intention expressed by the respondent that he would not be coming to work. It is not the case of the appellant that there was any material on record or indication from the respondent to show that he had abandoned the work. It is, therefore, difficult to subscribe to the theory of the appellant that the respondent had abandoned his work. The respondent, in his deposition, has stated that he had continued to work till 30th June, 1985. From the record, there is clear indication that the employer and the Contractor, both were acting hand in glove and the workers were often sent from the employer to the Contractor without issuance of any formal orders. That would however not change the employer in the eye of law. Even if the respondent is asked by the employer to work with its own Contractor, the respondent continued to be in the employment of the appellant in the absence of any formal termination of his employment. There is no warrant to infer that the respondent ever abandoned the work. Admittedly, the provisions of Section 25F of the said Act were not complied with and the termination of the respondent's employment was therefore illegal and was, therefore, rightly set aside by the Labour Court. There was, however, no need for the Labour Court to make any observation regarding the Contractor being registered or not or its having obtained the license of not. On that issue, the Labour Court was clearly wrong, because, as held by the Supreme Court in para 22 in Dinanath and others Vs. National Fertilisers Limited and others, reported in AIR 1992 SC 457, on which reliance was placed

by the learned counsel appearing for the appellant, merely because Contractor or the employer had violated the provisions of the Contract Labour (Regulation & Abolition) Act, by non-compliance with the provision of the registration or license, the Court should not issue any mandamus for deeming the contract labour as having become employee of the principal employer. In the present case, since, the respondent was admittedly an employee of the appellant till March, 1982 and since thereafter abandonment as alleged by the appellant has not been established against the respondent, he obviously continued to be the employee of the appellant and there was no question of considering him to be an employee of any Contractor, even if he was asked by the appellant to work with that Contractor for some time since the Contractor was also the Contractor of the appellant and there was a practice of asking the workmen of the appellant to work with the Contractor without issuing any transfer orders, as stated by the witness of the appellant.

#. In the above view of the matter, we do not find any infirmity with the impugned order and the learned Single Judge, in our opinion, has rightly upheld the award of the Labour Court. The appeal is, therefore, dismissed. There shall be no order as to costs. Interim relief stands vacated.

[R.K. ABICHANDANI, J.]

[SHARAD D. DAVE, J.]
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